



State of California  
**Commission on Judicial Performance**  
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Date: April 14, 2011

To: Persons and Organizations Interested in Rules Relating to Proceedings of the Commission on Judicial Performance

From: Commission on Judicial Performance  
Victoria B. Henley, Director-Chief Counsel

Subject: Invitation to Comment on Interim Amendments to Rules of the Commission on Judicial Performance

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At its March 2011 meeting, the commission approved circulation of interim amendments to rules 111.5 [correction of advisory letters], 114(b) [appearance before commission to contest notice of intended private admonishment] and 116(b) [appearance before commission to contest notice of intended public admonishment]. The interim amendments were adopted by the commission on March 23, 2011, and will be reconsidered at the conclusion of the public comment period.

The interim amendments with a brief explanation of the changes and a form for submission of comments can be found on the commission's Web site at [www.cjp.ca.gov](http://www.cjp.ca.gov) under Governing Provisions. The deadline for comments is June 13, 2011.

Comments may be submitted by mail or facsimile to:

Commission on Judicial Performance  
Attn: Janice M. Brickley, Legal Advisor to Commissioners  
455 Golden Gate Avenue, Suite 14400  
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**INTERIM AMENDMENTS**  
**[Adopted March 23, 2011]**

**Rule 111.5. Correction of Advisory Letter**

A judge who receives an advisory letter under either rule 110(c) or rule 111(c) may, within 30 days of the mailing thereof, apply to the commission for correction of an error of fact or law or both. The application shall be determined by the commission without an appearance by the judge before the commission unless the commission determines otherwise.

*Factual representations or information, including documents, letters, or witness statements, not previously presented to the commission during the staff inquiry or preliminary investigation will not be considered unless it is shown that the new factual information is (1) material to the question of whether the judge engaged in misconduct or the appropriate level of discipline, and (2) that the information could not have been discovered and presented to the commission with reasonable diligence during the staff inquiry or preliminary investigation. If the commission determines that the new facts should be considered, the commission may withdraw the advisory letter and proceed with the staff inquiry or preliminary investigation in order to investigate the new factual information. Following such further staff inquiry or preliminary investigation, the commission may close the matter, issue an advisory letter or impose any discipline authorized by commission rules and article VI, section 18 of the California Constitution.*

**Rule 114(b). Private Admonishment (Appearance before the commission)**

A judge may, within 30 days of the mailing of a notice of intended private admonishment, file with the commission a written demand for an appearance before the commission to contest the intended private admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court. A judge who demands an appearance before the commission to contest a notice of intended private admonishment shall, within 30 days of the mailing of the notice of intended private admonishment, submit a written statement of the judge's objections to the commission's proposed admonishment. The statement shall include the basis of the judge's objection.

After the time set for the appearance before the commission, the commission may:

- (1) Close the matter without disciplinary action;
- (2) Close the matter with a confidential advisory letter; or
- (3) Issue a private admonishment.

*Factual representations or information, including documents, letters, or witness statements, not previously presented to the commission during the preliminary investigation will not be considered unless it is shown that the new factual information is (1) material to the question of whether the judge engaged in misconduct or the appropriate level of discipline, and (2) that the information could not have been discovered and presented to the commission with reasonable diligence during the preliminary investigation. If the commission determines that the new facts should be considered, the commission may withdraw the notice of private admonishment and proceed with the staff inquiry or preliminary investigation in order to investigate the new factual information. Following such further preliminary investigation, the commission may close the matter, issue an advisory letter or impose any discipline authorized by commission rules and article VI, section 18 of the California Constitution.*

If the commission determines to issue discipline, it may in its final decision modify the notice in response to the judge's written objections and oral presentation.

**Rule 116(b). Public Admonishment (Appearance before the commission)**

The judge may, within 30 days of the mailing of a notice of intended public admonishment, file with the commission a written demand for an appearance before the commission to contest the intended public admonishment, and waive the right to formal proceedings under rule 118 and to review by the Supreme Court. A judge who demands an appearance before the commission to contest a notice of intended public admonishment shall, within 30 days of the mailing of the notice of intended public admonishment, submit a written statement of the judge's objections to the commission's proposed admonishment. The statement shall include the basis of the judge's objection.

After the time set for the appearance before the commission, the commission may:

- (1) Close the matter without disciplinary action;
- (2) Close the matter with a confidential advisory letter;
- (3) Issue a private admonishment; or
- (4) Issue a public admonishment.

*Factual representations or information, including documents, letters, or witness statements, not previously presented to the commission during the*

*preliminary investigation will not be considered unless it is shown that the new factual information is (1) material to the question of whether the judge engaged in misconduct or the appropriate level of discipline, and (2) that the information could not have been discovered and presented to the commission with reasonable diligence during the preliminary investigation. If the commission determines that the new facts should be considered, the commission may withdraw the notice of public admonishment and proceed with the staff inquiry or preliminary investigation in order to investigate the new factual information. Following such further preliminary investigation, the commission may close the matter, issue an advisory letter or impose any discipline authorized by commission rules and article VI, section 18 of the California Constitution.*

If the commission determines to issue discipline, it may in its final decision modify the notice in response to the judge's written objections and oral presentation.

#### **Explanation of Interim Amendments**

The commission is in the best position to make an informed decision on the disposition of a staff inquiry or preliminary investigation when presented with all relevant information. Thus, the interim rule requires that all information relevant to the matter before the commission must be presented to the commission in response to the staff inquiry or preliminary investigation letter sent to the judge and before the commission determines whether to close the matter, impose discipline or institute formal proceedings. The commission recognizes that in rare instances material evidence becomes available after the commission has issued an advisory letter or notice of intended private or public admonishment which could not have been discovered and presented to the commission with due diligence during the staff inquiry or preliminary investigation. Under those circumstances, the interim rule permits the commission to consider the newly discovered evidence. The standard set for consideration of newly discovered evidence is consistent with the standard in criminal and civil cases. (Pen. Code § 1181 (8); Code of Civ. Procedure § 657(4)).)

Newly discovered evidence may require further investigation by the commission. The results of further investigation may change the commission's determination as to the appropriate disposition. As such, the interim rule allows the commission to withdraw the intended discipline and proceed with a further staff inquiry or preliminary investigation when it considers newly discovered evidence. Following the further investigation, all options authorized by the rules and the California Constitution are open to the commission including closing the matter or imposing a lower or higher level of discipline than indicated before consideration of the new evidence.